



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to retain all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenants each with their own registered mail package on November 10, 2017 to the written forwarding address texted to the landlord by the tenants. Two registered mail tracking numbers were submitted in evidence which have been included on the cover page of this decision for ease of reference as "1" and "2". According to the online registered mail tracking website, tenant M.M. signed for and accepted the registered mail package on November 14, 2016 and tenant T.H. signed for and accepted the registered mail package on November 14, 2016. Based on the above, I find both tenants were served as of November 14, 2016, the date the tenants signed for and accepted their respective registered mail packages.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen with the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

The landlord affirmed that a written tenancy agreement exists between the parties. According to the landlord, a fixed term tenancy began on August 14, 2016 and was scheduled to end on

August 30, 2017. The landlord referred to a previous decision, the file number of which has been included on the cover page of this decision for ease of reference (the “previous decision”). In the previous decision, the landlord was granted an order of possession effective two days after service on the tenants and a monetary order of \$1,300.00 for unpaid September 2016 rent. The landlord stated that the tenants paid a security deposit of \$650.00 and a pet damage deposit of \$650.00 at the start of the tenancy which the landlord continues to hold.

The landlord’s monetary claim for \$3,057.75 actually totals \$3,059.75 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of October 2016 rent	\$1,300.00
2. Cleaning fee	\$260.00
3. Dump fee	\$220.00
4. Repair damages lock	\$60.00
5. Lost property	\$80.00
6. Recovery of two filing fees (\$100.00 for previous decision application and \$100.00 for this application)	\$200.00
7. Replacement of rental/liquidated damages	\$939.75
TOTAL	\$3,059.75

Regarding item 1, the landlord stated that the tenants refused to comply with the order of possession and did not leave the rental unit until October 23, 2016 and as a result, the landlord is seeking \$1,300.00 for loss of October 2016 rent.

Regarding item 2, the landlord submitted a receipt for \$260.00 for cleaning costs for the rental unit. The landlord testified that the tenants left the rental unit in a very dirty condition that required a lot of cleaning.

Regarding item 3, the landlord submitted a receipt for \$220.00 for garbage removal. The landlord testified that the tenants left a “ton” of garbage in the rental unit that had to be removed before the landlord could re-rent the rental unit.

Regarding items 4 and 5, the landlord has claimed \$60.00 for a repair to a lock and \$80.00 for lost property but did not submit any supporting evidence such as a receipt or condition inspection report to support this part of the landlord’s claim.

Regarding item 6, the landlord has claimed for the recovery of two filing fees. The landlord was advised during the hearing that the previous decision related to a direct request application which is an expedited ex-parte proceeding and to which the filing fee is not recoverable. As a result, the landlord was advised that the only filing fee that the landlord would be entitled to recover would be the matter before me and not the previous decision filing fee.

Regarding item 7, the landlord has claimed \$939.75 for the costs related to re-rent the rental unit after the tenants breached a fixed term tenancy. The landlord failed to provide a copy of the tenancy agreement and confirmed that the tenancy agreement did not include any amendments or addendums and did not include a liquidated damages clause. The landlord referred to an invoice of \$939.75 for a “placement fee” dated January 1, 2017.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants.

For items 1, 2 and 3, I find the landlord has met the burden of proof and is entitled to **\$1,300.00** in loss of October 2016 rent as the tenants continued to occupy the rental unit in October 2016 and did not vacate until October 23, 2016. In addition, I find the tenants breached section 37 of the *Act* by not leaving the rental unit in a reasonably clean condition and that the landlord is entitled to recover **\$260.00** for cleaning costs. Furthermore, I find the landlord is entitled to recover **\$220.00** for garbage removal costs.

For items 4 and 5, and while the landlord’s application was unopposed by the tenants, I find the landlord has failed to meet the burden of proof by failing to submit a receipt to support these portions of the landlord’s claim. As a result, I dismiss items 4 and 5 due to insufficient evidence, without leave to reapply.

For item 6, I find the landlord has failed to provide evidence that the tenants agreed to a liquidated damages fee agreed to in writing at the start of the tenancy. Furthermore, the landlord confirmed during the hearing that the tenancy agreement did not include an addendum or liquidated damages clause. Residential Tenancy Branch Policy Guideline 4 – Liquidated Damages reads in part:

“A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.”

[Reproduced as written]

Given the above and while the landlord’s application was unopposed by the tenants, the amount claimed still must be reasonable and in accordance with the *Act*, regulation and policy guidelines. Given the landlord’s testimony that there was no liquidated damages clause in the tenancy agreement and that there was no addendum to the tenancy agreement, I find the

landlord has failed to meet the burden of proof and is not entitled to liquidated damages which the landlord has described as “replacement of rental” in his application. Therefore, I dismiss item 6 due to insufficient evidence without leave to reapply.

Given that the landlord’s claim has merit, I grant the landlord the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

Based on the above, I find the landlord has established a total monetary claim of X as comprised below:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Loss of October 2016 rent	\$1,300.00
2. Cleaning fee	\$260.00
3. Dump fee	\$220.00
4. Repair damages lock	dismissed
5. Lost property	dismissed
6. Recovery of two filing fees (\$100.00 for previous decision application and \$100.00 for this application)	\$100.00
7. Replacement of rental/liquidated damages	dismissed
TOTAL	\$1,880.00

In reaching this finding I have considered the evidence before me. In addition, I find that the tenants breached section 37 of the *Act*. Section 37 of the *Act* requires that tenants leave the rental unit in a reasonably clean condition less wear and tear and I find that the tenants failed to do. In addition, I find the tenants liable for October 2016 loss of rent by failing to vacate the rental unit before October 1, 2016.

The landlord continues to hold a security deposit of \$650.00 and a pet damage deposit of \$650.00 for a total in combined deposits in the amount of \$1,300.00 which have accrued \$0.00 in interest. I authorize the landlord to retain the tenants’ full \$650.00 security deposit and full \$650.00 pet damage deposit pursuant to section 72 of the *Act* in partial satisfaction of the landlord’s monetary claim. Based on the above, I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$580.00**.

Conclusion

The landlord’s application has merit and is partially successful. The landlord has established a total monetary claim of \$1,880.00 and has been authorized to retain the tenants’ full \$650.00 security deposit and full \$650.00 pet damage deposit pursuant to section 72 of the *Act* in partial satisfaction of the landlord’s monetary claim. In addition, the landlord is granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in

the amount of \$580.00. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 2, 2017

Residential Tenancy Branch